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FM AMEMBASSY ASTANA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 6981  
INFO RUCNCIS/CIS COLLECTIVE 2239  
RUCNCLS/ALL SOUTH AND CENTRAL ASIA COLLECTIVE  
RUEHZL/EUROPEAN POLITICAL COLLECTIVE  
RUEHBJ/AMEMBASSY BEIJING 1602  
RUEHKO/AMEMBASSY TOKYO 2303  
RUEHUL/AMEMBASSY SEOUL 1237  
RUCNDT/USMISSION USUN NEW YORK 2618  
RUEHNO/USMISSION USNATO 2913  
RUEAIIA/CIA WASHDC  
RHEFAAA/DIA WASHDC  
RHEHNSC/NSC WASHDC 1797  
RUEKJCS/SECDEF WASHDC 1647  
RUEKJCS/JOINT STAFF WASHDC  
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UNCLAS SECTION 01 OF 02 ASTANA 002141

SENSITIVE  
SIPDIS

STATE FOR SCA/CEN, EUR/RPM, DRL

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SUBJECT: KAZAKHSTAN: JUDICIAL PANEL DECLINES TO REVIEW ZHOVTIS  
CASE

REF: (A) ASTANA 1978  
(B) ASTANA 1897

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11. (U) Sensitive but unclassified. Not for public Internet.

12. (SBU) SUMMARY: The judicial panel of the Almaty District Court refused on December 10 to review the conviction of prominent human rights advocate Yevgeniy Zhovtis for vehicular manslaughter, thus exhausting the last legal remedy currently available to his defense team. Although Zhovtis still technically could file a separate request on his own behalf, Zhovtis' lawyer will recommend that he wait until amendments, which would allow the Supreme Court to review the case, come into force. In the meantime, Zhovtis was sanctioned administratively twice for refusing to accept jobs offered by the penal-colony administration. He also released a public statement alleging pressure and unfair treatment from the colony's administration. Zhovtis' lawyer was denied permission to visit him on November 17 because of an alleged flu quarantine. END SUMMARY.

MOTION FOR REVIEW DENIED

13. (SBU) On December 10, the judicial panel of the Almaty District Court denied the request for review filed by Yevgeniy Zhovtis' defense team. At this stage, Zhovtis' defense team has exhausted all available legal remedies available, although technically Zhovtis still could file a similar request on his own behalf (ref A). Zhovtis' defense lawyer Vitaliy Voronov, who plans to see Zhovtis December 11, said he will advise Zhovtis to not file the request for a panel review but wait until amendments, which would allow the Supreme Court to review the case, come into force. The parliament passed these amendments at the beginning of November, and they await President Nazarbayev's signature. Voronov told PolOff that Zhovtis defense team now can file the case with the UN Human Rights Council, having exhausted all available legal remedies in Kazakhstan.

ZHOVTIS WILL NOT WORK FOR PENNIES...

14. (SBU) In the meantime, Zhovtis and his co-inmate, "Vremya" journalist Tokniyaz Kuchukov, were sanctioned twice for refusing to accept jobs offered by the administration of the minimum-security

penal colony where they are held. The two refused the jobs because of the low salaries and availability of positions better suited to their skills. The administration offered them work as security technicians and "duty officers in charge of night tables." Both refused the positions as incompatible with their skills. The legal ability of convicts to impact the choice of jobs is unclear. Article 99 of the Criminal Executive Code mandates that convicts must work in the jobs specified by the prison administration, but it also states that the administration can take into account the sex, age, ability to work "and, if possible, profession" of the convicts in choosing employment. Currently, Zhovtis and the prison administration seem to be at an impasse. (NOTE: The DCM will meet with Ministry of Justice's Penitentiary Committee Chairman on December 14 to learn more and note U.S. interest in the case. END NOTE.)

... NOR WILL HE STAY SILENT

15. (SBU) In a public statement released on November 13, Zhovtis and Kuchukov asserted that the administration was pressuring them to sign low-paid contracts and threatened to move them to a regular prison unless they complied. Zhovtis and Kuchukov also argued that the colony authorities were not granting to any inmate permission to live outside the penal colony, a policy they said came into force after their convictions. (NOTE: Kazakhstani law allows those in penal colonies to request permission to live near the colony in an apartment with their families. END NOTE.) Zhovtis' supporter Sergey Duvanov alleged to the newspaper "Respublika" that the authorities did not want to grant Zhovtis free access to a computer and the Internet. Duvanov, Voronov, and Zhovtis' deputy Roza Akyzbekova attempted to visit Zhovtis on November 17, but their request for visitation was refused because of an alleged flu quarantine. Although Duvanov accused the authorities of "putting

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Zhovtis under quarantine," Akyzbekova told PolOff that both Zhovtis and Kuchukov were, in fact, ill with the flu.

16. (SBU) COMMENT: Although this latest decision is disheartening, it does not surprise anyone in Kazakhstan, especially in light of the similar decision in the "precedent-setting" case of Kuchukov. Unless President Nazarbayev grants an improbable amnesty for Kazakhstan's independence day next week, the country's most prominent human right activist will be in a penal colony when it assumes the chairmanship of the Organization for Security and Cooperation in Europe. END COMMENT.

HOAGLAND